

**Editor's note: Appealed -- dismissed, Civ. No. 79-0527 (D.Utah Apr. 6, 1981)**

KENT E. PETERSON

IBLA 77-115

Decided May 20, 1977

Appeal from decision of the Idaho State Office, Bureau of Land Management, rejecting five acquired lands oil and gas lease offers. I-11441, I-11553, I-11554, I-11849, and I-11850.

Set aside and remanded.

1. Mineral Leasing Act for Acquired Lands: Consent of Agency! ! Oil and Gas Leases: Acquired Land Leases

The Bureau of Reclamation is not an "agency" within the ambit of that term in the Acquired Lands Mineral Leasing Act. 30 U.S.C. §§ 351-59 (1970). Where acquired lands are under the jurisdiction of a Bureau of the Department of the Interior, it is the Secretary's consent which is necessary to the leasing of the land. The Bureau's views will be considered carefully. However, where its views are essentially conclusory, it is proper to remand the cases to ascertain the detailed factual basis of such conclusions and whether leasing would be permissible if coupled with appropriate stipulations.

APPEARANCES: Kent E. Peterson, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Kent E. Peterson has appealed from five separate decisions of the Idaho State Office, Bureau of Land Management, all dated December 16, 1976, individually rejecting the five acquired lands oil and gas lease offers listed above. Appellant's lease offers were filed pursuant to the Mineral Leasing Act for Acquired Lands, as amended, 30 U.S.C. §§ 351-59 (1970). All the lands encompassed by the lease offers are under the jurisdiction of the Bureau of Reclamation (BuRec), Department of the Interior.

The reasons stated for the rejection of lease offers I-11553, I-11554, I-11849, and I-11850 1/ were:

The lands \* \* \* are under administration, management and jurisdiction of the Bureau of Reclamation. The land is within the Tex Creek Game Mitigation Area and the Bureau of Reclamation states that oil and gas leasing on these lands would be undesirable and in opposition to the intended function of these lands, and has recommended that no mineral leasing be allowed.

The land covered by these lease offers was previously rejected for leasing by the Bureau of Land Management upon the suggestion of the BuRec under other lease offers dealt with in Walter W. Sapp, 29 IBLA 319 (1977). There the lease offers were set aside and remanded for appropriate action in accordance with that decision.

[1] The BuRec is a bureau of the Department of the Interior and not an independent agency. Therefore its consent is not necessary to the issuance of an oil and gas lease under the Mineral Leasing Act for Acquired Lands, Duncan Miller, A-28104 (December 11, 1959); Daphne Shear, 29 IBLA 33 (1977), although its views will be considered carefully. However, the consent of an agency outside the Department for leasing acquired lands is required by 43 CFR 3109.3-1; Leeco Inc., 23 IBLA 194 (1976).

The Assistant Secretary of the Interior stated in Miller, supra:

Although the objections of a bureau within the Department, which is administering the lands, are to be given careful consideration and accorded their full weight in determining whether issuance of an acquired lands lease is in the public interest, such objections do not prohibit issuance of a lease if the objections are not persuasive and if it is determined that a lease should issue despite the objections. In the case of acquired lands under the jurisdiction of bureaus of this Department, the Secretary of the Interior is the one whose consent is necessary under section 3 (Section 3 of the Mineral Leasing Act for Acquired Lands § 352 (1970)) to the leasing of the land. His authority in that respect coalesces with his authority under the Acquired Lands Act to lease acquired lands in his discretion.

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1/ These are minuscule differences in the language employed in I-11441, but the substance is similar.

We said in Sapp, supra:

However, this is not the basis upon which BLM rejected the offers as to the BuRec lands. Rather it appears from the record that the offers involving lands were rejected solely because of BuRec's conclusionary objection. The offers concerning BuRec lands should be reconsidered to determine whether the offers should be rejected based upon BLM's independent evaluation of the factual milieu, or whether leases should issue despite the objection, or whether leasing might be undertaken with protective stipulations. At present there is no support in the record for BuRec's conclusion that oil and gas leasing on the lands in question would be "undesirable" and not compatible with the "intended function" of such lands.

The cases at bar do not reflect any independent evaluation by BLM or that any consideration was given by BLM to the feasibility of lease issuance with appropriate protective stipulations. It may be that BLM, after its independent evaluation of these cases, in the light of the facts will conclude that these applications ought to be rejected. However, the records indicate that BLM treated the BuRec reports as mandating rejection. Moreover, we note appellant's assertion that other lands in the area, also acquired lands under the jurisdiction of BuRec, have been leased for oil and gas.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the five decisions appealed from are set aside and the cases are remanded for appropriate action in accordance herewith.

Frederick Fishman  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Edward W. Stuebing  
Administrative Judge

